Filed 1/23/19 In re I.C. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re I.C., a Person Coming Under the Juvenile Court Law.	H045776 (Santa Clara County Super. Ct. No. 117JD024914)
SANTA CLARA COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES, Plaintiff and Respondent, v. D.G., Defendant and Appellant.	

In this appeal, D.G. (Mother) asks us to reverse a juvenile court order issued by the court pursuant to section 361.5 of the Welfare and Institutions Code denying her reunification services with respect to her daughter, I.C. (born January 2017).[1] At the March 2018 dispositional hearing in this matter, the trial court bypassed Mother for reunification services in accordance with subdivisions (b)(10) and (b)(11) of section 361.5. Under those provisions, the court is not required to offer reunification services to a parent if the court has previously terminated reunification services or parental rights with respect to a sibling or half sibling of the child and the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the

[1] All future statutory references are to the Welfare and Institutions Code.

sibling or half sibling . . . ." (§ 361.5, subd. (b)(10) & (11).) Mother argues that the juvenile court erred in finding that she had not made reasonable efforts to treat her long-standing substance abuse issues. We conclude that the record sufficiently supports the court's determinations and will affirm the juvenile court's bypass order.

I. FACTUAL AND PROCEDURAL BACKGROUND

I.C., the minor who is the subject of these proceedings, was detained by the Santa Clara County Department of Family and Children's Services (the Department) in December 2017, after the San Jose Police Department discovered her and her father, J.C. (Father), sleeping in a car. Mother was not present at the time I.C. was detained; a social worker with the Department located Mother in custody at Elmwood Women's Correctional Facility (Elmwood), having been detained for violating probation.

According to the first amended dependency petition filed January 11, 2018, which was ultimately sustained by the juvenile court, I.C. came within the jurisdiction of the court under subdivisions (b)(1) and (j) of section 300 for a variety of reasons. When found by the police, I.C. was living with father in a vehicle, deemed "hazardous and unsafe" for I.C. At the time of removal, Mother's whereabouts were unknown, although she was later located in custody in Elmwood, where she remained until March 7, 2018. The parties had an ongoing custody dispute, in which Mother alleged Father took I.C. without her consent. Mother obtained custody orders in Merced County, but failed to make appropriate plans for I.C.'s care despite knowing Mother had an active arrest warrant, which ultimately led to her incarceration. Both parents had a history of substance abuse, which they each minimized and failed to treat. Mother had been on formal probation since December 2011 and failed to comply with the random drug testing ordered as part of her probation. As stated in the petition, Mother had an "extensive criminal history dating back to 2001 that includes convictions associated with controlled substances, weapons, fighting, false checks, stolen property, theft, and warrants due to violations of probation." Finally, Mother's parental rights were terminated as to two

children, A.C. in 2011, and R.G. in 2013, in two prior dependency proceedings, after Mother failed to complete the ordered reunification services.[2]

The juvenile court held the dispositional hearing on March 19, 2018, at which time it admitted into evidence the jurisdiction/disposition report, and five addendum reports. The court also heard testimony from the social worker assigned to I.C.'s case and from Mother.

Although the petition as sustained by the juvenile court references only two prior dependency proceedings, involving A.C. and R.G., Mother has five other children, all of whom were removed through dependency actions. Three of the children, P.M., Is.C., and V.C., were placed in protective custody in May 2009, after Mother and V.C. both tested positive for methamphetamines shortly after V.C.'s birth.[3] Mother denied using illegal amphetamines in the prior 11 to 12 years, and denied using alcohol or marijuana in the prior two years, claiming she tested positive in May 2009 because she had been around people who were using illegal drugs. Yet, in March 2009 she was found in possession of a methamphetamine pipe by Gilroy police, and cited accordingly. Mother refused to comply with voluntary drug testing. In July 2009, the court authorized the release of Is.C. and V.C. into Mother's care on the condition she reside at House on the Hill. About a month after entering the facility, Mother left with the children and failed to return. Mother then left the children with a relative. She was discharged from House on the Hill for noncompliance.

In October 2009, P.M., Is.C., and V.C., as well as Mother's two other children, Y.C. and O.C., were declared dependents due to Mother's substance abuse issues. The court ordered reunification services for Mother, including parenting classes, drug testing,

[2] I.C. is the only child shared between Mother and Father; Father is not the parent of Mother's other children.

[3] P.M. was the subject of a dependency action in 2004-2005, which was dismissed in December 2005. The investigator in A.C.'s proceeding noted the court dismissed P.M.'s action, "without the mother ever having addressed her substance abuse issues."

counseling/psychotherapy, substance abuse assessment, 12-step program participation, parent orientation, and a drug intervention group. She entered an outpatient treatment program, but was subsequently discharged due to excessive absences. In May 2010, Mother participated in another assessment, at which time she stated she was seven months pregnant. She admitted to using methamphetamines three months prior. Mother stopped participating in reunification services and stopped visiting with the children. In December 2010, the children were returned to the care of their father and reunification services were terminated for Mother. The court dismissed the dependency in June 2011.

Mother gave birth to A.C. in June 2010; a mandated reporter from the hospital referred the matter to the Department because Mother was not participating in reunification with P.M., Is.C., and V.C. Mother admitted to the social worker who interviewed her that she used methamphetamines and alcohol early on in the pregnancy. Mother claimed she stopped participating in reunification with her older children because of problems she was having with their father, and because she "felt intimated" and did not get along with the social worker assigned to the case. The new worker assigned to A.C.'s case encouraged Mother to reengage with services, and arranged for her to resume visits with her other children. The juvenile court ordered A.C. into protective custody based on Mother's long-standing substance abuse. In September 2010, the court made A.C. a dependent of the court as a result of Mother's ongoing substance abuse and failure to participate in reunification services with her older children. The court ordered reunification services for Mother related to A.C., including parenting orientation, a parenting class offered at Elmwood, a substance abuse parenting class, individual therapy, random drug testing, attendance at a 12-step program, a substance abuse assessment, aftercare drug treatment program, and attendance at a domestic violence support group. In July 2011, the court terminated Mother's reunification services based on her failure to regularly participate and make substantial progress. In December 2011, the court terminated Mother's parental rights for A.C.

Mother gave birth to R.G. in November 2012; both Mother and R.G. tested positive for methamphetamines at the hospital, resulting in a mandated reporter referring the matter to the Department. Mother had recently been released from Elmwood, where she was incarcerated for a probation violation; she admitted to having used illegal substances once during her pregnancy. R.G. was placed in protective custody based on Mother's use of a controlled substance during her pregnancy. The juvenile court took jurisdiction of R.G. in April 2013, and ordered reunification services for Mother. In July 2013, the court terminated the reunification services, as Mother did not consistently participate. In November 2013, the juvenile court terminated Mother's parental rights for R.G.

In June 2015, one of the older children, Y.C., who was 17 years old at the time, was again declared a dependent; the court offered Mother reunification services, which were terminated in October 2015. The dependency remained open until Y.C. became a non-minor dependent.

In the current case, Mother admitted to a history of substance abuse. She first used methamphetamine when she was 16 years old, claiming it was not her "drug of choice" because she had relatives who passed away due to use of the drug. She reported that she had not used methamphetamines since a year prior to I.C.'s birth, and had not used marijuana for over six months. Mother admitted to drinking alcohol occasionally. Mother testified that she now recognizes she is an addict. Mother was enrolled in a substance abuse treatment program approximately three years prior to I.C.'s detention, but did not complete the program. She did not participate in any treatment programs in 2016 or 2017 prior to being incarcerated in December 2017.

Mother indicated to the social worker assigned to this case that she was willing to undertake random drug testing to prove her commitment to being clean and sober. Mother's probation officer reported Mother was ordered to attend residential substance abuse treatment as part of her probation in March 2016; Mother checked into the facility

and immediately left for unknown reasons. This was not the first time Mother failed to complete court-ordered treatment; her probation officer reported Mother failed to comply with three similar orders in 2013 and 2014. While Mother should have completed probation by December 2012, the court extended the term due to her failure to attend court and comply with orders, such that she would "max out" in April 2018, "qualifying as an unsuccessful" probation. One of Mother's probation officers referred to her as a "chronic absconder," with a long history of failing to report, including after the court reduced a sentence following I.C.'s birth so she could care for I.C.; despite the court ordering her to report regularly, she failed to do so. She also failed to appear at a court hearing in June 2017.

While Mother testified in the current case that she had not used methamphetamines since a year before I.C.'s birth in January 2017, the assigned social worker testified that Mother failed a random drug test in April 2017, a claim Mother denied. There is no documentary evidence of such a result in the record; at the hearing, the social worker admitted the alleged result was not attached to any of her reports or otherwise admitted into evidence. However, the record does indicate that at a documented meeting with her probation officer in April 2017, Mother reported using methamphetamines and marijuana three days prior. Her probation officer also reported that it was difficult to determine Mother's substance abuse status because she did not report frequently enough to produce reliable test results.

Mother was taken into custody on December 9, 2017; on December 19, 2017, she was convicted of resisting arrest and providing false identification to a police officer. Her probation officer reported she was thereafter convicted for unlawful possession of drugs on January 4, 2018. While incarcerated from early December 2017 through early March 2018, Mother made some efforts to engage in substance abuse treatment and related services. Mother suggests she did so voluntarily prior to the instigation of the instant juvenile dependency action, in order to improve her life. The record shows she

did enroll in several services on the date I.C. was placed into protective custody, December 18, 2017, suggesting she did not yet know a dependency action would be started. Mother enrolled in the Re-Entry Correction Program (RCP) at Elmwood on December 18, 2017, and made plans to attend House on the Hill substance abuse program upon her release. Mother was terminated from the RCP because of a rule violation; while the social worker did not know the details of the violation, Mother testified it was because she was five minutes late to class. However, the rehabilitation officer from the program indicated to the social worker the incident leading to her recusal from the program was "not the first time that the mother had committed a minor rule violation during her participation in RCP"; the rehabilitation officer would not provide additional details. Mother also enrolled in the Milpitas Adult Education's "Three R's curriculum"[4] on December 18, 2017.

After the Department filed the initial petition on December 20, 2017, Mother enrolled in a positive parenting class and the New Opportunity Work Program through Goodwill of Silicon Valley. She also enrolled in the Parents and Children Together (PACT) program and visited with I.C. twice in January 2018, and twice in February 2018; she was denied a third visit in February because of her rule violation and removal from the RCP. Mother was assessed for the Supportive Transition Empowerment Program (STEP), through Family and Children Services, in January 2018 as well. This is a voluntary program.

Mother was released from Elmwood on March 7, 2018, at which time she obtained a transitional housing unit from Pathways. She enrolled in an outpatient substance abuse treatment program through Family and Children Services, attending all sessions in the brief period from March 7 to the dispositional hearing on March 19, 2018; she also attended AA meetings. She obtained a California identification card, signed up to receive

[4] The Three R's are "Re-educate, Recovery, Re-Entry."

general assistance, and obtained employment through Goodwill. In order to maintain both her housing and her employment, she is required to drug test. The social worker testified Mother refused to drug test for the Department on March 16, 2018, without explanation. Mother claims she "did not refuse" to test for the Department; she instead asked if she could test at Family and Children Services, "so it could be documented."

Despite Mother's efforts and statement that she wanted to change her life, the social worker recommended the court bypass reunification services for Mother and I.C. She did not believe Mother had internalized a relapse plan regarding substances, despite Mother claiming to have such a plan, given her history of amphetamine use and failure to follow through on court ordered substance abuse treatment, as well as her inability to discuss particulars regarding her substance use. The social worker also noted Mother's failure to resolve her criminal issues, her failure to comply with probation, as well as the fact Mother failed to participate in reunification services three of the previous four times they were offered to her.

At the conclusion of the contested dispositional hearing on March 19, 2018, the juvenile court found I.C. to be a minor described by subdivisions (b) and (j) of section 300 and declared dependency, removing the minor from both parents' physical custody.[5] Thereafter, the court concluded that Mother's efforts were not sufficient to overcome a bypass finding under subdivisions (b)(10) and (b)(11) of section 361.5.[6] It therefore ordered no reunification services for Mother, finding reunification would not be in I.C.'s best interest. The court did order reunification services for Father, setting an interim review hearing and a six-month review for Father.

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[5] Mother and Father each submitted to the petition on jurisdiction. Father submitted on disposition as well.

[6] In her opening brief, Mother alleged the court did not make a specific finding on the record that her efforts were insufficient; she concedes in her reply brief that the court did make such a finding at the March 2018 hearing.

Mother timely noticed her appeal on April 24, 2018. (§ 395; *In re A.L.* (2014) 224 Cal.App.4th 354, 361; *In re Daniel K.* (1998) 61 Cal.App.4th 661, 667.)

II. DISCUSSION

Mother argues the court's order bypassing reunification services for her is not supported by substantial evidence. "There is a presumption in dependency cases that parents will receive reunification services. [Citation.] Section 361.5, subdivision (a) directs the juvenile court to order services *whenever* a child is removed from the custody of his or her parent *unless* the case is within the enumerated exceptions in section 361.5, subdivision (b). [Citation.]" (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95 (*Cheryl P.*).) However, "as evidenced by section 361.5, subdivision (b), the Legislature recognizes that it may be fruitless to provide reunification services under certain circumstances. [Citation.] Once it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources.' " (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744.) "The statutory sections authorizing denial of reunification services are sometimes referred to as 'bypass' provisions. [Citation.]" (*Jennifer S. v. Superior Court* (2017) 15 Cal.App.5th 1113, 1121 (*Jennifer S.*).) We review an order bypassing reunification services for substantial evidence. (*Ibid*; *Cheryl P., supra*, 139 Cal.App.4th at p. 96.)

Under section 361.5, subdivisions (b)(10) and (b)(11), the juvenile court can deny reunification services to a parent who has failed to reunify with another child, or whose parental rights to another child were terminated, if the court finds that the parent, "has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling . . . ." (§ 361.5, subd. (b)(10) & (11); *R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914 (*R.T.*).) Here, Mother concedes the Department met its burden to show the problems leading to the prior termination of reunification services and parental rights are the same problems that led to I.C.'s removal. "The reasonable effort

requirement focuses on the extent of a parent's efforts, not whether he or she has attained 'a certain level of progress.' [Citation.]." (*R.T., supra*, 202 Cal.App.4th at p. 914.) However, "reasonable effort" as used in subdivision (b)(10) and (b)(11) is "not synonymous with ' "cure." ' " (*Jennifer S., supra,* 15 Cal.App.5th at p. 1121.) The parents' efforts "must, however, be more than ' "lackadaisical or half-hearted." ' [Citation.]." (*Ibid*.)

While the "reasonable effort" standard does not require a complete cure of the problems that led to the failed reunification of a sibling or half-sibling, or termination of the parental rights for the sibling or half-sibling, it similarly does not mean "that *any* effort by a parent, even if clearly genuine, to address the problems leading to removal will constitute a reasonable effort and as such render these provisions inapplicable. It is certainly appropriate for the juvenile court to consider the *duration, extent and context* of the parent's efforts, as well as any other factors relating to the *quality and quantity* of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the *focus* of the inquiry, a parent's progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the *reasonableness* of the effort made." (*R.T., supra*, 202 Cal.App.4th at p. 914, original italics; accord *Jennifer S., supra,* 15 Cal.App.5th at p. 1121.)

Mother contends that the juvenile court's order bypassing reunification services in this case was not supported by substantial evidence because the record revealed that she was finally making reasonable efforts to treat her, admittedly, long-term problem with substance abuse. Mother notes she was clean from amphetamine since a year before I.C. was born, despite not having completed a substance abuse program during that time. Moreover, since learning about I.C.'s detention through the disposition hearing, Mother argues she consistently and voluntarily participated in services, including living in a sober living environment and providing negative drug tests for her housing and employment.

While we agree that Mother's recent efforts are certainly laudable, we conclude that substantial evidence supports the court's bypass order with respect to Mother. As the juvenile court stated, "Although she started the Step program maybe prior to us getting involved here she's—she's only been in the community 12 days. She's been to two AA meetings, church twice and started work today, that's just not a track record that—of the duration and quality of efforts that are sufficient here. And I'm very concerned that her one opportunity to test with the Department she declined to do so." Relative to Mother's long-standing history of substance abuse, criminal activity, and failure to comply with court orders in both the juvenile and criminal context, it was appropriate for the juvenile court to consider the duration, extent, and context of Mother's efforts in evaluating whether her efforts were reasonable under section 361.5, subdivisions (b)(10) and (b)(11). (*R.T.*, *supra,* 202 Cal.App.4th at p. 914.)

Mother argues this court should compare her situation to the facts of *Cheryl P.*, in which the appellate court granted a writ for extraordinary relief and ordered the trial court to provide the parents additional reunification services for their younger child, finding insufficient evidence to support a finding that the parents had not made reasonable efforts to treat the problems that led to the removal of their older child. (*Cheryl P.*, *supra,* 139 Cal.App.4th at pp. 98-100.) The juvenile court conducted a review hearing in the older child's case on the same date as the dispositional hearing for the younger child; it terminated reunification services for the older child, then refused such services for the younger child based on that termination. (*Id*. at p. 95.) The Court of Appeal first found that the trial court did not make the required finding that the parents failed to make a reasonable effort to treat the problems leading to the older child's removal from their custody, instead relying only on the fact they failed to reunify with that child. (*Id*. at p. 97.) Even if the appellate court implied such a finding, it determined the evidence did not support that finding, as the parents had made numerous efforts to treat the problems in the more than 18 months that had passed between the older child's detention and the

termination of his reunification services. (*Id*. at p. 98.) They were living in an appropriate apartment for over year, had complied with their case plans and made progress, were undergoing psychological and psychiatric evaluations, completed parenting courses, engaged in individual therapy, and visited with the older child. (*Ibid*.) Notably, nothing in the opinion in *Cheryl P*. suggests the parents had other children previously removed from their care, aside from the two children referenced in the opinion.

We distinguish the facts of the instant case from those in *Cheryl P.*, where the parents participated in and complied with extensive case plans for over 18 months. Here, I.C. is the eighth of Mother's children involved in a dependency proceeding. Although the petition in this action specifically focuses on Mother's failure to reunify with only two of those children, the record reveals she has not reunified with any of the children. Mother argues her alleged sobriety for at least a year before I.C.'s birth, coupled with her efforts since December 2017 to seek services, shows her reasonable efforts to treat the problems that lead to the termination of reunification services and parental rights for A.C. and R.G. Yet, there is substantial evidence in the record that she continued to have similar problems after I.C.'s birth. She was arrested in February 2016 and given a reduced sentence so she could care for I.C., yet she failed to comply with court orders to report regularly to her probation officer. In March 2016 the court ordered her to attend residential drug treatment, which she failed to complete. Her probation officer claims Mother reported using methamphetamines and marijuana in April 2017; at minimum, she failed to report frequently enough for reliable drug testing. Mother was convicted of possession of unlawful drugs in January 2018. All of this indicates Mother's efforts to treat the problems that lead to the termination of reunification services and parental rights for A.C. and R.G. did not begin in earnest until I.C.'s detention in December 2017.

Even after Mother started to make those efforts, she failed to fully comply with the RCP program rules, resulting in loss of visitation with I.C. Mother's social worker noted

that Mother's past compliance with services while incarcerated was not an indicator of her commitment to continuing her efforts once released from incarceration. Moreover, as the juvenile court suggested in its findings, and the social worker confirmed in her reports, Mother's participation in services for 12 days between her release from Elmwood and the March 19, 2018 dispositional hearing does not show she will maintain her sobriety and continue to engage in services in the long term. Notably, Mother declined to drug test when requested by the Department just prior to the March 2018 hearing.

Here, considering the duration, extent, and context of Mother's efforts, the record supports the trial court's finding that these efforts were not reasonable under section 361.5, subdivisions (b)(10) and (b)(11). Under these circumstances, the juvenile court could properly conclude Mother's efforts were "too little, too late." (*R.T., supra,* 202 Cal.App.4th at p. 915 [mother's receipt of one to two months' of services following child's removal was not sufficient under section 361.5]; accord *Jennifer S., supra,* 15 Cal.App.5th at p. 1124 ["the juvenile court correctly noted in this case, the parents 'have had years, years to address the problems that caused the first removals of their respective children.' We thus have no trouble finding support in the record for the court's related conclusion that father's minimal efforts at engaging in substance abuse treatment mere weeks before the June 2017 contested hearing were not a reasonable effort to treat this problem for purposes of subdivision (b)(10) bypass."]; *Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 601 [father, whose parental rights had previously been terminated for three other children, did not admit to problems until dispositional hearing, waited until two weeks before hearing to end relationship with mother, whose substance abuse was primary cause of dependency, and only recently started attending substance abuse classes at his attorney's behest, such that bypass was appropriate.].)

III. DISPOSITION

The order is affirmed.

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Greenwood, P.J.

WE CONCUR:

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Grover, J.

_____
Danner, J.

In re I.C.; DFCS v. D.G.
No. H045776